

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSHUA GLOWACKI,

Defendant.

Case No. 1:21CR258

Akron, Ohio

Thursday, October 28, 2021

11:22 a.m.

TRANSCRIPT OF CHANGE OF PLEA HEARING
BEFORE THE HONORABLE JOHN R. ADAMS
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government: Michael A. Sullivan
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Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription.

1 Thursday, October 28, 2021

2 THE DEPUTY CLERK: This United States District
3 Court is now in session, the Honorable John R. Adams
4 presiding.

5 THE COURT: For the record, the Court has before
6 it today Case Number 1:21CR258. The case is United States
7 of America versus Joshua Glowacki. We're here today for a
8 pretrial.

9 Counsel for the government, are you ready to proceed?

10 MR. SULLIVAN: Yes, Judge. On behalf of the
11 United States, Michael A. Sullivan.

12 THE COURT: Counsel for the defendant?

13 MR. NEMECEK: Yes, Your Honor. On behalf of the
14 defendant, Eric Nemecek.

15 THE COURT: Does Mr. Glowacki consent to
16 proceeding today by video?

17 MR. NEMECEK: He does, Your Honor.

18 THE DEFENDANT: I do, Your Honor.

19 THE COURT: Counsel for the government, what's
20 the update and status of the matter? We have a November 8
21 trial date.

22 MR. SULLIVAN: Judge, I believe Mr. Glowacki is
23 prepared to enter a plea of guilty to Count 1 pursuant to a
24 plea agreement. It is a conditional plea agreement with him
25 reserving his right to appeal this Court's denial of his

1 motion to suppress.

2 I believe Mr. Glowacki has -- I forwarded the plea
3 agreement to him, and I've also forwarded a copy to the
4 Court.

5 THE COURT: Counsel for the defendant?

6 MR. NEMECEK: Yes, Your Honor. That's my
7 understanding as well.

8 I've had the opportunity to discuss it with Mr.
9 Sullivan. I've also had the opportunity to discuss the
10 proposed plea agreement with Mr. Glowacki. And it is my
11 understanding that a plea will be forthcoming here today.

12 THE COURT: Mr. Glowacki, it's my understanding
13 that you wish to withdraw your former plea of not guilty,
14 you wish to plead guilty today to receipt of visual
15 depictions of minors engaged in sexually explicit conduct
16 pursuant to a written plea agreement.

17 Is that what you would like to do today?

18 THE DEFENDANT: That is correct, Your Honor.

19 THE COURT: Before I can decide to accept your
20 plea, it's necessary that I ask a series of questions of you
21 to be certain that your plea is voluntary, to make certain
22 you understand the possible consequences of this plea.

23 Before I begin with my questions, you'll be placed
24 under oath. You'll be sworn to tell the truth.

25 Would you please raise your right hand while I

1 administer the oath.

2 (The Defendant was sworn in.)

3 THE COURT: All right. Thank you.

4 You may put your hand down.

5 I'm required to tell you you're now under oath. It's
6 important that all your answers to my questions be truthful.
7 Any answers that you give that are later shown to be false
8 could be used against you in a subsequent prosecution for
9 perjury or making a false statement.

10 Additionally, if you have any questions, please let me
11 know, and either I or your attorney will explain further.

12 Is that understood?

13 THE DEFENDANT: I understand, Your Honor.

14 THE COURT: All right. State your full name and
15 age for the record, please.

16 THE DEFENDANT: My full name is Joshua Matthew
17 Glowacki, and I'm currently 23 years old.

18 THE COURT: Are you under the influence of any
19 type of drugs, alcohol, or medicine that might affect your
20 ability to understand these proceedings?

21 THE DEFENDANT: I am not, Your Honor.

22 THE COURT: Have you gone over the indictment
23 with your attorney, and do you understand the nature of the
24 charges against you in this case?

25 THE DEFENDANT: I have, Your Honor.

1 THE COURT: Have you had adequate time to review
2 with him all the evidence against you, all matters
3 pertaining to your case?

4 THE DEFENDANT: I have, Your Honor.

5 THE COURT: Have you had adequate time to do
6 that?

7 THE DEFENDANT: Yes, I have, Your Honor.

8 THE COURT: Thank you.

9 Are you satisfied so far with his work for you in this
10 case?

11 THE DEFENDANT: I am very satisfied.

12 THE COURT: Do you understand this is a felony
13 conviction? By virtue of this conviction you may be
14 deprived of valuable civil rights such as the right to vote
15 if you're incarcerated, the right to hold public office, the
16 right to serve on a jury, and the right to possess a firearm
17 or ammunition. You're precluded from ever doing that. And
18 if you're found with those items, it could be another
19 federal offense, a violation of state law as well. Under
20 federal law it's punishable by up to ten years in prison.

21 Do you understand those things?

22 THE DEFENDANT: I do understand, Your Honor.

23 THE COURT: There is a written plea agreement
24 between yourself and the government.

25 Did you fully read and discuss this agreement with

1 your attorney before you signed it?

2 THE DEFENDANT: I have, Your Honor.

3 THE COURT: Do you believe you understand the
4 terms of your plea agreement?

5 THE DEFENDANT: I do believe I do.

6 THE COURT: I'll go over it with you again here
7 in a few moments, cover many of the points.

8 One of the points is that the recommendation of the
9 parties will be considered by the Court but I'm not required
10 to follow the recommendation of the parties. If for some
11 reason I do not follow the recommendation of the parties, in
12 this case if I were to impose anything above 15 years, then
13 obviously that would be outside the recommendation. We can
14 discuss that further in a moment. But I'm not required to
15 do that.

16 Do you understand those things?

17 THE DEFENDANT: I do understand, Your Honor.

18 THE COURT: Has anyone made any kind of promises
19 or assurances to you to persuade you to enter into this
20 plea?

21 THE DEFENDANT: They have not, Your Honor.

22 THE COURT: All right. Then let's turn to the
23 plea agreement itself. I'll go through it by page and
24 paragraph.

25 Beginning at page 2, the statutory penalty for this

1 offense, the minimum term of imprisonment here is 15 years.
2 The maximum is 40 years.

3 There is a maximum fine of \$250,000.

4 There is a minimum period of what's called supervised
5 release. I'll explain that in greater detail in a moment.
6 Five years is the minimum. The maximum could be anywhere
7 from five years to up to life.

8 A special assessment of \$100 is required by law.

9 And based upon the nature of this offense, depending
10 on your economic circumstances, another \$5,000 special
11 assessment could be added.

12 Do you understand those things?

13 THE DEFENDANT: I do, Your Honor.

14 THE COURT: Turn to page 3. Here, I'm not sure,
15 there may be restitution depending on the victims. If there
16 is any victims identified who are pictured in any images you
17 may have viewed, then restitution may be ordered by the
18 Court.

19 In terms of supervised release, I've touched on it
20 earlier. When you're released from prison, you'll be
21 required to abide by a number of conditions, some of them
22 related to your computer, computer usage, sex offender
23 treatment, counseling, things of that nature.

24 The key here is that if you violate any of those
25 conditions, you could be returned to the Court. Depending

1 on the severity of the violation, you could be ordered to
2 serve more prison time. And under some circumstances, the
3 initial sentence along with the subsequent violation term
4 could exceed the maximum 40 years under limited
5 circumstances.

6 Do you understand those things?

7 THE DEFENDANT: I do, Your Honor.

8 THE COURT: I'm required to ask, are you a U.S.
9 citizen?

10 THE DEFENDANT: I am a U.S. citizen, Your Honor.

11 THE COURT: And then as part of the sentence, you
12 will be required, when you're released, to register under
13 the Sex Offender Registration and Notification Act. That's
14 called SORNA. That's referenced at page 3, paragraph 9 of
15 your agreement.

16 You'll be required to comply with SORNA which requires
17 periodic registration, including a current photograph,
18 community notification of your address. Depending on the
19 sentence, it could be a requirement up to the remainder of
20 your life. Again, that remains to be seen at the time of
21 the sentencing hearing.

22 Do you understand that as well?

23 THE DEFENDANT: I do, Your Honor.

24 THE COURT: You're pleading guilty to Count 1 of
25 the indictment. The government will move to dismiss Count 2

1 as part of your plea agreement.

2 Then at the top of page 4 is all of the details of
3 what are called the legal elements of the conduct that
4 brings you here.

5 Do you have any questions about those things?

6 THE DEFENDANT: I do not, Your Honor.

7 THE COURT: Sentencing guidelines are referenced
8 at paragraph 13. We'll discuss them in a moment.

9 Sentencing guidelines are somewhat -- they're not
10 irrelevant. They're important. But they're somewhat
11 subsumed by the mandatory 15 years or 180-month sentence.

12 The guidelines are important, but in addition to the
13 guidelines I'm required to consider the nature and
14 circumstances of this offense.

15 I'm required to consider your history and
16 characteristics, family ties, prior criminal record, a wide
17 range of information about you and your background.

18 I'm required to consider what is called the need for
19 the sentence imposed: Just punishment, adequate deterrence,
20 protect the public, reflect the seriousness of the offense,
21 improve the offender's conduct and condition. Those are the
22 things that the statute refers to as factors for me to
23 consider along with the kinds of sentences generally
24 imposed.

25 And of course the mandatory minimum is required by

1 law.

2 All those things will come into play in deciding your
3 sentence.

4 Do you understand those things?

5 THE DEFENDANT: I do, Your Honor.

6 THE COURT: In essence, the parties' agreement,
7 essentially they're asking me to impose, by way of this
8 agreement, to use the mandatory minimum as your sentence,
9 that that essentially is where we're at in this case.

10 The guidelines here are set forth down at the bottom
11 of page 18. As I mentioned, they are somewhat less
12 important because of the mandatory minimum.

13 The base offense level is 30.

14 With the three levels for acceptance would take you to
15 a 27.

16 His criminal history category, counsel, is it a I or
17 II? I know he has the prior conviction in Cleveland,
18 Cuyahoga County, I should say.

19 So would that place him at a I or a II?

20 MR. NEMECEK: I believe it may place him at an
21 III, Your Honor. I could be wrong about that. But with the
22 conviction and being on probation, I think that the
23 calculation may come out at a criminal history category III.

24 THE COURT: You might be right. The fact he's on
25 probation adds two points and then the nature of the

1 conviction.

2 So if the guidelines were to apply, sir, you would be
3 possibly at 87 to 108 months.

4 But again, the mandatory minimum exceeds that, so that
5 becomes your guideline sentence.

6 Do you understand those things?

7 THE DEFENDANT: I do, Your Honor.

8 THE COURT: All right. Then let's turn to page
9 6. Down at the bottom there is a provision called Waiver of
10 Appeal/Post-Conviction Attack. Under this agreement you're
11 waiving your right to appeal or to challenge your sentence
12 or your conviction in any way, except you reserve the
13 following issues for appeal only:

14 Number one, the Court's order denying your motion to
15 suppress or motion for a Franks hearing.

16 Secondly, you reserve the right to appeal any
17 punishment in excess of the statutory maximum. Not likely
18 to happen unless there is something about this case I don't
19 know about.

20 And then any sentence that would be above the
21 guideline range or above the 180 months, you could obviously
22 appeal that. It would be above the recommendation of the
23 parties.

24 And then lastly would be the issues regarding the
25 conduct of the lawyers, if there are any. If your own

1 lawyer was ineffective or if the government's attorney
2 engaged in some misconduct, then that could be an issue for
3 appeal.

4 Other than those areas I've just touched on, there
5 would be no appeal or challenge to your sentence or
6 conviction that would be permitted.

7 Do you understand those things?

8 THE DEFENDANT: I do, Your Honor.

9 THE COURT: Under the provision called waiver of
10 statute of limitations, there is a -- just a moment here.

11 MR. SULLIVAN: Judge, I didn't include that
12 provision in this agreement since there is no statute of
13 limitations for this offense.

14 THE COURT: All right. Thank you.

15 Then, sir, there is a plea agreement -- or in your
16 plea agreement, paragraph 22 details the factual basis of
17 the plea, meaning your conduct that triggered this
18 prosecution between December 24, 2019 and March 23, 2021.

19 Do you acknowledge you engaged in the conduct
20 described there?

21 THE DEFENDANT: I do, Your Honor.

22 THE COURT: All right. Do you have any questions
23 about anything I've gone over so far?

24 THE DEFENDANT: I have no questions, Your Honor.

25 THE COURT: Do you understand, sir, that you're

1 also agreeing to forfeit all of your electronics, the
2 property that was in essence utilized in this offense,
3 including your cell phone? And I'm not sure if there is any
4 other items that were utilized, but they would all be
5 forfeited to the government.

6 Do you understand that as well?

7 THE DEFENDANT: I just want to know if it's just
8 the ones that do have the content on it. Not anything else.

9 THE COURT: The plea agreement says the phone
10 itself.

11 Is there any other items, counsel, that the government
12 is seeking forfeiture? That's the Samsung S21 cell phone
13 that's further described in paragraph 23.

14 MR. SULLIVAN: I believe that's the only item
15 with contraband on it, Judge.

16 THE COURT: All right.

17 Do you understand that, Mr. Glowacki?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: The phone will be forfeited.

20 All right. Then turning to the very first part of
21 your agreement, the very first page relates to your
22 constitutional trial rights.

23 Under our constitution and the laws of the United
24 States, you have a constitutional right to a trial in this
25 case. That trial could be to a jury, if you would like. In

1 the alternative, the trial could be to myself if the
2 government consented to me hearing the case.

3 The first question is, sir, do you understand that you
4 do have a constitutional right to a trial in this case?

5 THE DEFENDANT: I do, Your Honor.

6 THE COURT: Secondly, do you wish to waive your
7 right to trial and plead guilty today pursuant to this
8 agreement?

9 THE DEFENDANT: I do, Your Honor.

10 THE COURT: Even though you've indicated you
11 would like to plead guilty, sir, I'm still required to go
12 over with you, explain to you the rights that you are
13 waiving by entering this plea, explain the trial rights that
14 you're waiving by entering this plea.

15 So bear with me. I'll go over the rights as described
16 in paragraph 1. If you have any questions at all, please
17 let me know.

18 I'll ask if you understand these rights. I'll ask if
19 you're voluntarily waiving these rights.

20 So first of all, if there were a trial in this case,
21 witnesses for the government -- let me back up.

22 First of all, if there were a trial, you would be
23 presumed innocent. That's your first trial right. The
24 government would be required to prove you guilty by
25 competent evidence beyond a reasonable doubt. That's the

1 standard the government would have to meet. Number one.

2 Number two, if there were a trial in this case,
3 witnesses for the government would have to come here in
4 court, testify in your presence. Your attorney could
5 cross-examine those witnesses, ask questions of them for
6 you. He could object to any evidence the government offers.
7 And he could offer evidence in your behalf if you would
8 like.

9 You're not required to present any evidence in your
10 defense, but you would have that right. The right to
11 present evidence would include the right to subpoena
12 witnesses, require them to be here to testify for you. It
13 could include your own right to testify, tell myself or a
14 jury your side of the case. And it would also include your
15 right not to testify. It's called your right to remain
16 silent which could not be used against you at trial. Your
17 plea agreement refers to it as your right to be protected
18 from compelled self-incrimination.

19 And of course if you could not afford a lawyer, we
20 would appoint an attorney to represent you at trial.

21 Do you understand all those trial rights, sir?

22 THE DEFENDANT: I do, Your Honor.

23 THE COURT: Do you wish to waive those rights and
24 waive your right to a trial and plead guilty today pursuant
25 to this agreement?

1 THE DEFENDANT: I do, Your Honor.

2 THE COURT: Has anyone tried to force you, coerce
3 you, or threaten you in any way to enter this plea?

4 THE DEFENDANT: No one has, Your Honor.

5 THE COURT: Thank you.

6 Counsel for the government, have I missed anything?

7 MR. SULLIVAN: I do not believe so, Judge. Thank
8 you.

9 THE COURT: Thank you.

10 Mr. Nemecek, have I missed anything?

11 MR. NEMECEK: I don't believe so, Judge. Thank
12 you.

13 THE COURT: All right. Thank you, sir.

14 Mr. Glowacki, any final questions before we complete
15 the plea?

16 THE DEFENDANT: No other questions, sir.

17 THE COURT: All right. First of all, sir, you've
18 heard me describe the rights that you're waiving by entering
19 this plea. You've heard me describe the possible
20 consequences of the plea along with the terms of your plea
21 agreement.

22 Knowing those things, how do you plead to one count of
23 receipt of visual depictions of minors engaged in sexually
24 explicit conduct?

25 How do you plead to that offense?

1 THE DEFENDANT: I plead guilty, Your Honor.

2 THE COURT: I'll make a finding in this case Mr.
3 Glowacki is fully competent and capable of entering an
4 informed plea. His plea of guilty is a knowing and
5 voluntary plea supported by an independent basis in fact
6 containing each of the essential elements of the offense.

7 I now will adjudge him guilty of this charge.

8 Sir, I'm required to give our probation department
9 about 14 weeks. Actually now they ask for 16 weeks in order
10 to complete a presentence investigation report. Cooperate
11 with the probation officer and provide truthful, accurate
12 information so I can decide an appropriate sentence here.
13 And your attorney will advise you further regarding that
14 process.

15 I'm looking, counsel, at February 24 at 1:00 p.m.

16 Is that convenient for the government?

17 MR. SULLIVAN: Just give me one second.

18 I'm sorry. Did you say February 24?

19 THE COURT: Yes.

20 MR. SULLIVAN: Sure. That's fine. Thank you.

21 THE COURT: Mr. Nemecek, does that work for you?

22 MR. NEMECEK: It does, Your Honor.

23 THE COURT: All right. Thank you.

24 Cooperate with your lawyer, Mr. Glowacki, and I assume
25 you're still seeing a counselor. That would be productive

1 to help you in the future, I would think.

2 So thank you very much. Everyone have a good day.
3 Stay safe.

4 MR. SULLIVAN: Thank you, Your Honor.

5 MR. NEMECEK: Thank you, Your Honor.

6 (Proceedings concluded at 11:40 a.m.)
7

8 C E R T I F I C A T E
9

10 I certify that the forgoing is a correct
11 transcript from the record of proceedings in the
12 above-entitled matter.
13

14 S/Caroline Mahnke 6/21/2022

15 Caroline Mahnke, RMR, CRR, CRC Date
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